Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1993

E. B. Rood, *Petitioner,*

v.

Pinellas County, A Political Subdivision of the State of Florida, Fred Marquis, Pinellas County Administrator, and the Pinellas County Planning Council, *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

Edward B. Rood, *pro se*
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80 pp

QUESTIONS PRESENTED

A. "Whether, once a jury establishes as fact, that an unconstitutional taking of property without compensation has occurred, the injured party is entitled to damages as a matter of law?"

B. "Whether Rood has a protected property interest, pursuant to the Fifth and Fourteenth Amendments to the Constitution of the United States in:

"1. a contractual Development Agreement under § 163.3220, Florida Statutes, which permits land owners and local governments to enter into binding agreements pertaining to all aspects of the development of land, including the mitigation of the impacts of new development; and

"2. a road platted onto his property and in a permit to connect to said road?"

LIST OF PARTIES

Petitioner, E. B. Rood, is an Attorney at Law and a member of the Florida Bar. Rood appeared *pro se* before the District Court and in the preparation of briefs to the Circuit Court. Oral argument before the Circuit Court was conducted by the Honorable Arthur J. England, Jr. *

In the complaint below, Rood did not specify the capacity in which Marquis was sued. Rood subsequently stipulated that this is an "official capacity" action.

Although Pinellas County is a "political subdivision of the State of Florida", there are no corporate entities, as contemplated by Rule 29.1, involved herein.

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* A retired Justice of the Florida Supreme Court.

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** Pursuant to Rule 32 of the Court.

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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E. B. Rood respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App., *infra*, 2a,) is reported as a table opinion at 15 F.3d 1096. The opinion of the District Court (App. *infra*, at 4a - 11a) is unreported.

JURISDICTION

The Court of Appeals entered its judgment on February 4, 1994 (App., *infra*, 1a). No rehearing was sought. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment V

The Fifth Amendment to the Constitution of the United States provides in pertinent part: "... nor shall any person be ... deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Constitution of the United States, Amendment XIV

The Fourteenth Amendment provides in pertinent part: "... nor shall any State deprive any person of life, liberty, or property, without due process of law, ..."

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983

42 U.S.C. § 1983 provides in pertinent part: "Every person who, under color of state law ... subjects, or causes to be

subjected, any citizen ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, ..." 42 U.S.C. § 1983.

STATEMENT OF THE CASE

Rood is the owner of a parcel of land of approximately 100 acres, located within the incorporated City of Oldsmar, within the geographic limits of Pinellas County, Florida. The Southern boundary of Rood's property is contiguous to unincorporated Pinellas County.

Rood purchased his property in 1982 in reliance on the Zoning Districts applicable to the property. Commencing in 1985, Rood began to attempt to develop and use his property pursuant to those Zoning Districts. However, Oldsmar's Comprehensive Plan was inconsistent with its Zoning Ordinance and, pursuant to § 163.3194, Florida Statutes, Rood was prevented from using his property in accordance with the Zoning Districts applied to his property.

Partly as a result of Rood's inability to use his property in accordance with the Oldsmar Zoning Ordinance, Rood and Oldsmar began, in mid-1986, to discuss the potential to permit the use of the property under a Development Agreement pursuant to § 163.3220, Florida Statutes. The contemplated Development Agreement contract was to include an adjacent property.

Negotiations with Oldsmar continued from mid-

1986 to the late Spring of 1987, at which time Rood, the adjacent property owner, and Oldsmar reached agreement as to the form, content and requirements of a Development Agreement. (App., *infra*, 12a, *et.seq.*)

In the course of establishing the terms and conditions of the Development Agreement, Rood and Oldsmar consulted closely with Respondents, Pinellas County and Marquis. One result of the consultation between Rood, Oldsmar and Marquis, was a letter from Marquis to Oldsmar, dated April 15, 1987, (App., *infra*, 35a), [1] which set forth parameters for the **maintenance** of a collector road to be built by Rood, on and adjacent to his property, without ever questioning whether Pinellas County would permit the road (a Northbound extension of an existing local road, known as Duane Avenue) to be built. (App., *infra*, 22a - 23a, ¶ 12; 25a, ¶ b(1).)

After Rood, Oldsmar and the neighboring property owner approved the Development Agreement in principle, the parties set about implementing it. One required implementation task was to amend the City's Comprehensive Plan. (App., *infra*, 16a - 17a.)

As part of the Comprehensive Plan Amendment process, Rood and Oldsmar were allegedly required to obtain approval of an amendment to the Countywide Comprehensive Plan of the Pinellas County Planning Council (P.P.C.). (App., *infra*, 17a.) The alleged requirement to amend the Countywide Comprehensive Plan is

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[1] Complaint, Exhibit 3; Trial, Exhibit 53.

found in Chapter 74-584, Laws of Florida, as amended, a special act of local application which purported to establish Countywide land use planning controls for Pinellas County.

Rood and Oldsmar applied to the P.P.C. for an amendment to the Countywide Comprehensive Plan, but the P.P.C. failed to approve the amendment request. Rood and Oldsmar then sought certiorari review of that decision in the Pinellas County Circuit Court.

Simultaneously, two challenges [2] were pending in the Pinellas County Circuit Court with respect to the issues of whether or not the P.P.C. had properly adopted its Comprehensive Plan, (*i.e.*, in accordance with the procedural requirements of the statute;) and whether or not Chapter 74-584, Laws of Florida, unconstitutionally delegated legislative authority to an non-elected body. The Pinellas County Circuit Court ultimately found that the P.P.C. had improperly adopted its Comprehensive Plan, and that it unconstitutionally exercised legislative authority, and appeals from those rulings were taken, but dismissed. [3]

As a result of the holdings that the P.P.C. improp-

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[2] *City of Safety Harbor and Wilbur Brantly v. The Pinellas County Planning Council*, unpublished, Pinellas County Circuit Court Case 86-9550-15, September, 1987, amended January, 1988; *St. Petersburg Fourth Street Holding Company v. Pinellas County Planning Council*, unpublished, Pinellas County Circuit Court, April, 1988; appeals dismissed, 528 So.2d 1194 (Fla. 2d DCA, 1988).

[3] Footnote 2, *supra*.

erly adopted its Comprehensive Plan, and that it was unconstitutionally exercising legislative power, Rood and Oldsmar no longer needed to obtain the P.P.C.'s approval of some of the Comprehensive Plan amendments required by the Development Agreement, and previously sought and rejected. Further, Respondents Pinellas County and Marquis could no longer rely on the P.P.C. to block the development of Rood's land.

With the P.P.C. obstacle removed, Rood and Oldsmar subsequently sought the remaining necessary approvals from Respondents Pinellas County and Marquis. These approvals were for the designation, as a collector road in the Transportation Elements of the County Comprehensive Plans, [4] of Duane Avenue and to the South of, Rood's property. The approvals sought also included the connection of Duane Avenue to Rood's property, and a right of access thereby, utilizing the right-of-way previously platted on Rood's property.

The collector road designation, the connection and access approval were sought in order to fulfill conditions of the Development Agreement (App., *infra* at 12a, *et.seq.*) Marquis and Pinellas County refused to set the application of Rood and Oldsmar for hearing, and delayed the hearing of the application, thereby denying Rood procedural due process of law, and taking his property, includ-

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[4] Both the Comprehensive Plan for unincorporated Pinellas County, pursuant to C. 163, F.S.; and the Countywide Comprehensive Plan of the renewed P.P.C. see CC. 88-458 and 88-464, Laws of Florida.

ing his property rights in his land, in access to his land, and in the Development Agreement.

When the applications were ultimately set for hearing and denied, Rood and Oldsmar renegotiated the Development Agreement between them. [5]

PROCEEDINGS BELOW

Rood commenced this action in the District Court. The jurisdiction of the District Court was invoked pursuant to 28 U.S.C. § 1331, a cause of action arising under the Constitution and laws of the United States, in particular the Fifth and Fourteenth Amendments to the Constitution, and 42 U.S.C. § 1983.

Pinellas County and Marquis sought Summary Judgment, which the District Court denied, finding issues of fact for the trier of fact. The action, as it was ultimately tried, had two counts and components:

- a just compensation count against the P.P.C. for the period July 15, 1987 to July 2, 1988, during which the unconstitutional P.P.C. enforced its improperly adopted Comprehensive Plan against Rood, and took his property thereby; and
- a procedural due process claim against

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[5] The Development Agreement Amendment has subsequently been foreclosed and vitiated by a later Mechanic's Lien foreclosure action against the neighboring property owner, who did not participate in negotiating the Amendment.

Pinellas County and Marquis for the unconstitutional delay in setting the required hearing, which delay had as its undisputed motive, the enrichment of the County at the expense of Rood and Oldsmar. This procedural due process claim was for the taking of Rood's property - land, access and contract - for the period June 15, 1988 - June 13, 1989 - the length of the delay caused by Respondents Pinellas County and Marquis.

After a trial on the merits, a jury found that the P.P.C. was liable to Rood, but that Rood had suffered no damages as a result of the actions of the P.P.C. The jury further found Pinellas County and Marquis liable to Rood, with damages assessed at $2,000,000.

Post-trial motions were made, and the District Court ultimately granted a Motion for Judgment Notwithstanding the Verdict, in favor of Pinellas County and Marquis, and denied Rood's motions related to damages from the P.P.C. (App., *infra* at 4a, *et.seq.*.) The Eleventh Circuit affirmed, (App., *infra*, at 2a).

Two critical and undisputed facts were established at trial, which merit the consideration of this Court. It was undisputed that Pinellas County could not approve new development in the greater Oldsmar area, because of infrastructure capacity constraints; and that Pinellas County received 100% of Transportation Impact Fees paid by new development in the unincorporated area of the County, but only 50% of such fees paid by new develop-

ment in Cities such as Oldsmar.

The facts which emerged at trial, as set out, *supra*, clearly established that Pinellas County and Marquis had an illicit, monetary motive for denying Rood and Oldsmar a hearing on the designation of Duane Avenue as a collector road - to enrich the County coffers at the expense of Rood and Oldsmar. The illicit motive of Respondents Pinellas County and Marquis was unrebutted at trial.

It was further established at trial that once Pinellas County and Marquis could no longer rely on the P.P.C. to stop the development of Rood's property and allow the County to collect 100% of the Transportation Impact Fees from development which could thus proceed in the unincorporated part of the County, they resorted to delaying the hearing necessary to permit the development of Rood's property. It was apparently particularly persuasive to the jury that, while Marquis had written in April, 1987, (App., *infra*, at 35a) with respect to who would maintain the Duane Avenue collector road after it was constructed, thereby clearly stating that the collector road **could be constructed**, he testified at trial:

> "I have consistently maintained that the County would not support putting arterial or collector roads through a single residential street ... "

The facts of this case are clear - the P.P.C. took

Rood's property without compensation; and Pinellas County and Marquis denied Rood procedural due process of law for reasons which were improper, and which resulted from Respondents' illicit motive of enriching the County's coffers at the expense of Rood and Oldsmar. The questions of law for this Court are whether Rood is entitled to damages for the taking; and whether Rood had property interests which were protected by the mandates of the Fifth and Fourteenth Amendments which require procedural due process of law.

REASONS WHY CERTIORARI SHOULD BE GRANTED

In addition to the obvious desirability of correcting the errors below, there are two compelling reasons why certiorari should be granted in this case.

1. The finding that Rood was not entitled to damages from the P.P.C. is in direct conflict with decisions of this Court and of other circuits.
2. The finding by the lower courts that Rood has no protected property is in direct conflict with decisions of this Court (pp. 12 - 15, *infra*) and with decisions of other Circuits (pp. 15 - 19, *infra*).
3. Although "contract zoning" has long been considered illegal, several states are moving towards permitting the use of statutorily

authorized Development Agreements with enabling statutes such as § 163.3220, F.S. The value of these Development Agreements, will be vitiated if, contrary to established Constitutional law, a land owner has no protected property interest in the resulting contract.

JUST COMPENSATION

In this case, in answer to special interrogatories, the jury found that the P.P.C. had taken Rood's property without compensation, but the jury failed to award damages. In *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, (1987) this Court held:

> "... We merely hold that where the government's activities have already worked a taking of all use of property, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective." *Id.*

More recently in *Lucas v. South Carolina Coastal Commission*, 112 S.Ct. 2886 (1992), the Court held:

> "... When, however, a regulation that de-

> clares 'off-limits' all economically productive or beneficial uses of land goes beyond what the relevant background principles would dictate, compensation must be paid to sustain it." [Footnote omitted] *Id.* at 2901.

See, also, Bannum, infra, and *Wheeler [IV] v. City of Pleasant Grove*, 896 F.2d 1347 (11th Cir. 1990)

In the instant case, the jury found, in spite of a factual dispute as to the effect of the P.P.C. action (App., *infra* at 7a, fn. 3) that the P.P.C. had taken Rood's property. The law as established by this Court requires compensation for this taking.

PROPERTY INTEREST CONFLICTS
SUPREME COURT CONFLICTS

This Court has consistently held that a contract is property, which is protected by the Fifth and Fourteenth Amendments. An early holding to this effect is found in *Long Island Water-Supply Co. v. City of Brooklyn*, 166 U.S. 685 (1897) in which Justice Brewer, writing for a unanimous Court held:

> "... A contract is property, and like any other property may be taken under condemnation proceedings for public use. *New Orleans Gas Co, v. Louisiana Light etc.*, 115 U.S. 650, 673 ..." *Id.*

In *United States v. Northern Pacific Railway Co.*, 256 U.S. 51, 63, (1921) the Court found a protected property interest "within the protection of the due process of law clause of the Constitution" in a land grant which operated as a contract.

In *Perry v. Sindermann*, 408 U.S. 593, (1972), Justice Stewart, writing for seven justices, found the potential for a protected property interest in an **implied** contract of employment. The *Perry* holding was somewhat reinforced by the later comments of the Court, *per curiam*, that "mutually explicit understandings" enure more strongly to protected property interests, than to protected liberty interests: *Jago v. Van Curen*, 454 U.S. 14, 17 (1981).

In between *Perry* and *Jago*, the subject holding was reinforced by Justice Blackmun, writing for the majority, and holding:

> "Contract rights are a form of property and as such may be taken for a public purpose provided that just compensation is paid." [Citations omitted] *United States Trust Company of New York v. State of New Jersey*, 431 U.S. 1, 19, fn. 16 (1977).

Rood's Development Agreement with the City of Oldsmar was a state entitlement based on state law, which is the source of Constitutionally protected property rights: *Roth v. Board of Regents*, 408 U.S. 564, (1972). Further,

> "... The Fourteenth Amendment's protection of 'property' however, has never been interpreted to safeguard only the rights of undisputed ownership. Rather, it has been read **broadly** to extend protection to 'any significant protected property interest,' *Boddie v. Connecticut*, 401 U.S. at 379, including statutory entitlements. See *Bell v. Burson*, 402 U.S. at 539; *Goldberg v. Kelly*, 397 U.S., at 262.
>
> "The appellants were deprived of such an interest ... They had acquired this interest under the conditional sales contracts ..." [Emphasis Added] *Fuentes v. Shevin*, 407 U.S. 67, 86 (1972).

The clearest indication of Rood's property interest in the contractual Development Agreement, as established by the law of this Court, is stated as follows:

> "... Valid contracts are property, whether the obligor be a private individual, a municipality, a state or the United States. ..." *Lynch v. United States*, 292 U.S. 571, 578, (1934).

In finding that Rood had no protected property interest in the contractual Development Agreement, the lower Courts have acted in conflict with the established

law of this Court, and Certiorari should be granted to cure this conflict.

CIRCUIT CONFLICTS

In addition to a property interest in the Development Agreement contract, Rood also asserts a protected property interest in a permit to connect his property to Duane Avenue, and in the platting of Duane Avenue onto his property. [6] Respondents argued that Rood had no protected property interest in such a permit or connection, nor in the Development Agreement Contract.

The holding of the Circuit Court that Rood had no protected property interest, was, to an extent, consistent with some of its earlier holdings: *Marine One, Inc. v. Manatee County*, 898 F.2d 1490 (11th Cir. 1990); *Economic Development Corporation of Dade County v. Stierhem*, 782 F.2d 952 (11th Cir. 1986); although there is also Eleventh Circuit precedent to the contrary: *North Texas Producers Assoc. v. Young*, 308 F.2d 235, 243 (5th Cir. 1962). [7]

Assuming arguendo, that the Eleventh Circuit has consistently found no property interest in various types of

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[6] Pursuant to Rule 32, the Plat of West Oldsmar, showing the Duane Avenue, Trial Exhibit 3, is lodged with the Court for review of how the street is actually platted onto Rood's property.

[7] Binding precedent in the Eleventh Circuit: *Bonner v. City of Prichard, Alabama*, 661 F.2d 1206 (11th Cir. *en banc* 1981).

development permits, [8] this finding is in conflict with decisions in other circuits, sufficient to merit certiorari review by this Court.

Circuit conflict on the issue of a property right in a contract is found most clearly in *Bannum, Inc., v. City of Louisville*, 958 F.2d 1354 (6th Cir. 1992), where the Plaintiff had a contract with the United States to provide "community treatment centers" for released prisoners. The Plaintiff was prevented from fulfilling its contract by zoning actions of the City government, which violated the Fourteenth Amendment, and the Sixth Circuit affirmed an award of damages for the loss of the contract.

The Second Circuit has found protected property interests in land use issues implicit in the right to expand a non-conforming land use: *Greene v. Town of Blooming Grove*, 879 F.2d 1061 (2d Cir. 1989).

Similarly, the District Court for the Eastern District of Pennsylvania, following Third Circuit law, found a protected property interest in a license agreement for the use of a particular property as a race track: *Lara, Inc. v. South Whitehall Township*, 729 F.Supp. 415 (E.D. Pa. 1989). The Fourth Circuit has also found at least a limited, protected property interest in a building permit: *Scott v. Greenville County*, 716 F.2d 1409 (4th Cir. 1983).

The Seventh Circuit has an appropriately broad definition of "protected property rights", finding property rights in a liquor license: *Reed v. Village of Shorewood*, 704

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[8] Footnote 10, *infra*.

F.2d 943 (7th Cir. 1983) and *Brookpark Entertainment, Inc. v. Taft*, 951 F.2d 710 (7th Cir. 1992); in the renewal of an operating license for a care facility: *Easter House v. Felder*, 879 F.2d 1458 (7th Cir. 1989); vacated, 494 U.S. 1014 based on *Zinermon v. Burch*, 494 U.S. 113 (1990) [9]; and an occupancy permit, *Polenz v. Parrott*, 883 F.2d 551 (7th Cir. 1989);

The Eighth Circuit [10] has clearly recognized at least a limited property right in land use permits in *Littlefield v. City of Afton*, 785 F.2d 596 (8th Cir. 1986); and in building permits: *Cunningham v. City of Overland*, 804 F.2d 1066 (8th Cir. 1986); *Wintercreek Apartments of St. Peters v. City of St. Peters*, 682 F.Supp. 989 (E.D. Mo. 1988).

Accordingly, there is a broad range of opinion within the Circuits, defining a protected property interest for the purposes of a procedural due process challenge under the Fourteenth Amendment. The Courts universally recognize the key holding that protected property interests come from independent sources, such as state law: *Roth, supra.*

The holdings further suggest that the less discretion enjoyed by the local government in approving or denying

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[9] *Zinermon* was a procedural due process case, which did not focus on the "property interest" issue.

[10] The Eighth Circuit suggests that a similar result should be reached in the Eleventh Circuit, relying on *Dirt, Inc. v. Mobile County Commission*, 739 F.2d 1562 (11th Cir. 1984); *Littlefield, infra* at 601.

a permit which is being sought, the stronger the property interest in the permit; *e.g., Littlefield, supra*. Rood argued to the Eleventh Circuit that he had protected property rights pursuant to the platted right-of-way on his land: *Indian Rocks Beach South Shore v. Ewell*, 59 So.2d 647 (Fla. 1952); and an absolute property right of access to Duane Avenue:

> "... We do not doubt that the abutting owner's **right of access**, or of ingress and egress from and to the street, ... are easements and **private property** incidental to the ownership of the abutting lot, nor that these easements cannot be 'taken' or 'appropriated' without just compensation being made for them as such **property**." [Emphasis added] *Selden v. City of Jacksonville*, 10 So.457 (Fla. 1891)

> "As incidents to ownership of a lot bordering on a public street, there are ... the **private property right** of egress and ingress from and to the lot by way of the street ..." [Emphasis added] *Bowden v. City of Jacksonville*, 42 So. 394 (Fla. 1906).

Florida law thus totally eliminates discretion with respect to both the use of platted rights-of-way, and property access, this case is closely similar to the cases

decided in other Circuits, based on the absence of discretion to grant or deny access and the use of the platted right-of-way. Therefore, there are conflicts amongst the Circuits which require resolution by this Court in this case and certiorari should be granted.

THE DEVELOPMENT AGREEMENT CONCEPT [11]

Traditionally, land use and zoning litigation has focussed on the issue of land use compatibility: the need, in the words of Justice Sutherland, to "keep the pig out of the parlor": *Village of Euclid, Ohio v. Ambler Realty*, 272 U.S. 365, (1926); *New Motor Vehicle Board v. Fox*, 439 U.S. 96 (1978).

More recently, however, the trend of land use litigation has been away from the need to preserve land use compatibility (or keep the pig out of the parlor); and into either a mixture of compatibility and impacts: *Lucas, supra*; or to cases dealing purely with land use impacts, and exactions therefor: *Nollan v. California Coastal*

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[11] In *Kasier Development Co. v. City and County of Honolulu*, 649 F.Supp. 926 (D. Haw. 1986); *affm'd* 913 F.2d 573 (9th Cir. 1990), and relied on by the District Court, the term "Development Agreement" is employed. However, the "Development Agreement" in *Kaiser* is very different from the Development Agreement at issue herein. In *Kaiser* the agreement was essentially a real estate "take-down" contract between two private entities; it was not specifically permitted by state law, (even though Hawaii has a statute comparable to § 163.3220, F.S., App., *infra*, at 36a) and it was not developed in consultation with the local governments.

Commission, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 854 P.2d 437 (Or. 1993); certiorari granted, 114 S.Ct. 544 (1993);, argued, October Term, 1993, (pathway exaction); *Commercial Builders of Northern California v. City of Sacramento*, 941 F.2d 872 (9th Cir. 1991), (impact fees); *Moore v. City of Costa Mesa*, 886 F.2d 260 (9th Cir. 1989), (street widening dedication); *Fuery v. City of Sacramento*, 780 F.2d 1448 (9th Cir. 1986), (cost of sewer improvements); *Sederquist v. City of Tiburon*, 765 F.2d 756 (9th Cir. 1985), (joint access); and *Pengilly v. Multnomah County*, 810 F.Supp. 1111 (D. Or. 1992), (right-of-way dedication). [12]

The need for land use impact litigation can be substantially reduced by Development Agreements, such as those authorized by § 163.3220, Florida Statutes, and the companion statutes in other states. Rather than having the unilateral imposition of mitigation requirements, as happened in the cases cited *supra*, Development Agreements permit the developer and the local government to negotiate and agree, in a contract, on the form and extent of development, and the mitigation therefor.

Traditionally, "contract zoning" has been unlawful in Florida: *Hartnett v. Austin*, 93 So.2d 86 (Fla. 1956); *J.C. Vereen & Sons, Inc. v. City of Miami*, 397 So.2d 979 (Fla.

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[12] See also, Pelham, Thomas G., *Florida State University Law Review*: "Adequate Public Facility Requirements: Reflections on Florida's Concurrency System for Managing Growth", Volume 19, p. 974, *et.seq.*, Tallahassee, Florida, 1992.

3d DCA 1981); and elsewhere. [13] However, in recent years at least five states, in addition to Florida, [14] have adopted enabling legislation, similar to § 163.3220, F.S., to permit similar Development Agreements.

Federal courts have in at least two cases: *Geralnes B.V. v. City of Greenwood Village, Colorado*, 583 F.Supp. 830 (D. Co. 1984); and *Board of County Supervisors of Prince William County, Virginia v. United States*, 23 Cl.Ct. 205 (1991); recognized the validity of "contract zoning", pursuant to provisions similar to § 163.3220, F.S. [15]

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[13] *E.g., State ex.rel. Zupanic v. Schiemenz*, 174 N.W.2d 533 (Wis. 1970); *Bartsch v. Planning and Zoning Commission of Town of Trumbull*, 506 A.2d 1093 (Conn.App. 1986).

[14] California, Hawaii, Illinois, Nevada and Washington, See App., *infra* at 36a for a list of the statutory provisions, and their enactment dates. In addition, a further six states permit similar agreements for particular entities, Virginia permits the "proffers" described in *Prince William, infra*, and other states permit annexation agreements, or agreements with respect to specific land uses such as parks or landfill sites.

[15] In *Prince William County*, the Court found no property interest in "proferrs" of impact mitigation. This finding was clearly based on the fact that development stopped {with only limited infrastructure and some housing lots in place (*Id.* at 207)} when the subject land was acquired by the United States. (*Id.* at 209). At that time, the developer was compensated by the United States which acquired its land, and the County no longer had any impacts which required mitigation through the proffered donations. The situation in *Prince William County* thus differs significantly from the temporary taking in an on-going development activity in the instant case, where Rood still owns his land, and its ultimate development will impose impacts on Oldsmar.

Further, the express legislative intent of § 163.3220, F.S., merits, as a matter of public policy, consideration by this Court, (App., *infra*, 37a - 38a). The intent and great value of permitting Development Agreements (or "contract zoning"), as set out in the legislative purpose of § 163.3220, F.S., has been reflected in a number of law review articles: [16]

> "... [Developer's] agreements between local governments and developers, usually sanctioned by state statute, set out, *inter alia*, various use limitations and infrastructure/public facility exactions sought by the former, and the freezing of land use controls for a fixed period together with service guarantees for the latter. ...
> "...
> "... How the states deal with such issues as vested rights and land use controls may well decided the utility of -- if not the necessity for - developers' agreements." [Footnotes omitted] Callies, David L., *The Urban Lawyer*: "Developers' Agreements and Plan-

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[16] Although Development Agreements have been authorized since as early as 1963 in Illinois, and beginning more recently in 1979 in California, the articles point out that there has been very little litigation regarding them, and thus little case law on which the parties may rely. This fact supports Rood's contention that a negotiated Development Agreement helps avoid litigation.

ning Gain", Vol. 17, No. 3, p. 599, (1985).

"In spite of potential problems with development agreements, their use is appealing because of their significant advantages to the developer, the municipality and the consumer. ...

"...

"... Lack of certainty also harms local governments. Reaching agreements with developers up front avoids costly and prolonged litigation and administrative hearings which distract from more productive planning efforts. ... Development agreements allow municipalities the flexibility to produce regulation more closely tailored to the surrounding community.

"...

"Development agreements are an effective means of encouraging planned development. Imposing the *Nollan* limitations on existing and future agreements guarantees that these arrangements achieve their intended purpose while also avoiding potential harms. ..." [Footnotes omitted] Crew, Michael H., *The Urban Lawyer*: "Development Agreements after *Nollan v. California Coastal Commission* ..." Vol. 22, No. 1, p. 23 (1990).

"... The [California] Act specifically addresses the cost, waste and uncertainty inherent in the development process, and seeks to strengthen the planning process by reducing the impact of these evils. In essence, the Act encourages local governments and developers to enter into arrangements ... as a result of detailed negotiations between the parties, the agreement formalizes each party's understanding of the project at an early date and this simplifies the approval process. In return, the developer may be required to 'pay' for these benefits by providing public facilities or in-lieu fees.
"...

"The development agreement ... is simply a species of **public contract**. ..." [Emphasis Added] Goldwich, David S., *Journal of Land Use & Environmental Law*, "Development Agreements: A Critical Introduction", Vol. 4, p. 249 (1989).

Goldwich goes on to identify the exact problem which occurred in the instant case:

"... Yet development agreements are unable to provide absolute certainty as the police power can be invoked when necessary. ..." *Id.* at 263

but concludes:

> "... development agreements would probably survive a constitutional attack, given the Supreme Court's current position on the reserved power/contract clause conflict. While the police power may be used to thwart a development agreement, the vast majority of agreements would be substantially performed. In these instances, the parties would be able to reduce uncertainty and strengthen the planning process." *Id.* at 269.

From a public policy standpoint, it would defeat the purpose of Development Agreements as established by statute in Florida, and at least five other states, if another government entity could interfere with such an agreement, **without providing procedural due process of law**, and without being liable for taking a protected property interest. Therefore, while the police power may be available to thwart the implementation of a Development Agreement, procedural due process must be afforded in so doing, in recognition of the land owner's Constitutionally protected property right in the contract.

Therefore, certiorari should be granted to determine if, as a matter of public policy, statutorily permitted Development Agreements should be afforded status as protected property rights.

Property interests protected by the Fifth and Fourteenth Amendments to the Constitution of the United States and due process required by that those Amendments, are created by a variety of sources, including independent sources such as state law, rules or understandings. *Roth, supra*:

> "Property interests of course, are not created by the Constitution. Rather, they are created **and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law -- rules or benefits that secure certain benefits and that support claims of entitlement to those benefits**. ..." [Emphasis added] *Id.* at 577.

A recent decision of this Court further identifies Rood's property interests at issue:

> "Where the state seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests **were not part of his title to begin with.** [Foot-

note omitted] This accords, we think, with our 'takings' jurisprudence, which has traditionally been guided by the understandings of our citizens regarding the content of, and the State's power over, the 'bundle of rights' that they acquire when they obtain title to property. ..." *Lucas, supra*, 112 S.Ct. at 2899.

Rood's property rights in the platted right-of-way onto his property, and in a right of access to Duane Avenue were part of his title to his property **at all times**. At the time Respondents denied Rood procedural due process of law, the Development Agreement was also a part of his title, and a Constitutionally protected property interest of Rood's.

On the issue of the need for the safeguards of procedural due process, the 11th Circuit Court of Appeals in *Burch v. Apalachee Community Mental Health Services*, 840 F.2d 797, Cir. 1988) was affirmed, with Supreme Court holding:

"The Due Process Clause also encompasses a third type of protection, a guarantee of **fair procedure**. ... In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty or property' is not in itself unconstitutional; what is unconstitutional is

> the deprivation of such interest *without due process of law. Parratt* [*v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908 (1981)] 451 U.S. at 537, 101 S.Ct. at 1913; *Carey v. Piphus*, 435 U.S. 247, 259, 98 S.Ct. 1042, 1050, 55 L.Ed.2d 252 (1978)." [*Italic* emphasis by the Court; **Bold** emphasis added] *Zinermon v. Burch*, 494 U.S. 113 (1990).

As the District Court noted, for fair procedure to be required, there must be a property interest at stake. Rood has multiple property interests at stake: this Court has frequently emphasized that the term "property" as used in the Taking Clause includes the entire "group of rights inhering in the citizen's [ownership]." *e.g. United States v. General Motors Corp.*, 323 U.S. 373 (1945).

Rood, having demonstrated protected property interests in 1) the contractual Development Agreement; 2) the right-of-way platted onto his property; and 3) access and a connection to Duane Avenue, was therefore entitled to procedural due process of law, and the lower courts erred in their adjudication of this matter.

CONCLUSION

This Court has ruled, *Nollan, Lucas, supra*, that when an unconstitutional taking occurs, as a matter of fact, then, as a matter of law, compensation must follow. By denying Rood's post-trial motion for damages from the

P.P.C., the lower courts departed from established precedent of this Court, and certiorari should be granted to achieve consistency between this Court's rulings and those below.

Controlling precedent of this Court clearly indicates that a person has a protected property interest in a contract, and the finding to the contrary by the lower courts is in direct conflict with the holdings of this Court. Other circuits have found protected property interests in various land development permits, and the holding of the Eleventh Circuit in this case is inconsistent with the holdings of several other circuits.

The trend in land use litigation today is away from land use compatibility issues, and towards land use impact issues. Development Agreements as permitted by Florida and at least five other states are valid instruments of public policy, which serve to mitigate development impacts. If such Development Agreements are not considered as Constitutionally protected property, and other government entities may nullify them without providing procedural due process of law, then the whole purpose and intent of such contracts is vitiated, and public policy will suffer.

In finding that Rood did not have protected property interests, the lower courts erred, and the fundamental precepts of justice require correction of that error.

Therefore, Certiorari should be granted to ensure consistency between this Court's rulings and rulings of the

Eleventh Circuit, and amongst the Circuits, and to extend Constitutional protection to a land development regulation technique which presents a significant opportunity to substantially reduce uncertainty and cost in the land development process, and, as a result, to further substantially reduce land use litigation.

This case presents an important issue of public policy and federal law - whether there are Constitutionally protected property rights in a statutorily authorized Development Agreement Contract - which should be settled by this Court, but which has been decided below in conflict with the decisions of this Court. Therefore, certiorari should be granted, and this issue decided on the merits.

Respectfully submitted,

/s/ Edward B. Rood
EDWARD B. ROOD
Florida Bar No. 68120
200 North Pierce Street
Tampa, Florida, 33602
(813) 229-6591
Counsel of Record, *pro se.*

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1993

E. B. Rood, *Petitioner,*

v.

Pinellas County, A Political Subdivision of the State of Florida, Fred Marquis, Pinellas County Administrator, and the Pinellas County Planning Council, *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI APPENDICES

Edward B. Rood, *pro se*
Counsel of Record
200 North Pierce Street
Tampa, Florida, 33602
(813) 229-6591

UNITED STATES COURT OF APPEALS
For The Eleventh Circuit
No. 92-3168
D.C. Docket No. 89-685-Civ-T-10A

Edward B. Rood, Esq., *Plaintiff-Appellant*
v.
PINELLAS COUNTY,
a Political Subdivision of the State of Florida,
THE PINELLAS COUNTY PLANNING COUNCIL,
FRED MARQUIS,
Pinellas County Administrator, *Defendants-Appellees*.

Appeal from the United States District Court
for the Middle District of Florida

Before ANDERSON and BIRCH, Circuit Judges, and
ATKINS*, Senior District Judge

JUDGEMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgement of the said District Court in this cause be and the same is hereby AFFIRMED;

It is further ordered that plaintiff-appellant pay defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

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*Honorable C. Clyde Atkins, Senior U.S. District Judge for the Southern District of Florida, sitting by designation.

Entered: February 4, 1994
For the Court: Miguel J. Cortez, Clerk

By: MATT DAVIDSON
Deputy Clerk

ISSUED AS MANDATE: MARCH 22 1994

IN THE UNITED STATES COURT OF APPEALS
For The Eleventh Circuit
No. 92-3168
D.C. Docket No. 89-685-Civ-T-10A

Edward B. Rood, Esq., *Plaintiff-Appellant*
v.
PINELLAS COUNTY,
a Political Subdivision of the State of Florida,
THE PINELLAS COUNTY PLANNING COUNCIL,
FRED MARQUIS,
Pinellas County Administrator, *Defendants-Appellees*

Appeal from the United States District Court
for the Middle District of Florida
February 4, 1994

Before ANDERSON and BIRCH, Circuit Judges, and
ATKINS*, Senior District Judge

PER CURIAM:

We agree with the district court that appellant failed to demonstrate a property interest. Other claims on appeal are without merit.

AFFIRMED.

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*Honorable C. Clyde Atkins, Senior U.S. District Judge for the Southern Distrcit of Florida, sitting by designation.

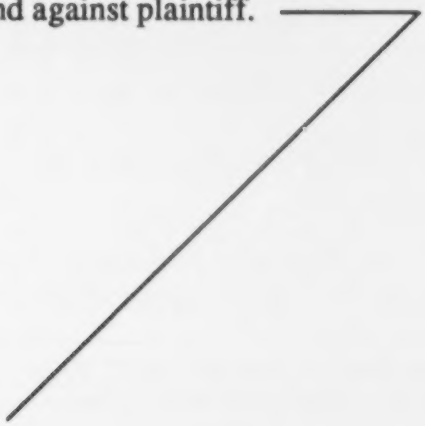
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
CASE NO. 89-685-Civ-T-10A
Edward B. Rood
v.
PINELLAS COUNTY,
a Political Subdivision of the State of Florida,
THE PINELLAS COUNTY PLANNING COUNCIL,
FRED MARQUIS,
Pinellas County Administrator

JUDGEMENT IN A CIVIL CASE

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgement is entered for defendants and against plaintiff.



October 27, 1992
Date

DAVID L. EDWARDS
Clerk

(By) Deputy Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
CASE NO. 89-685-Civ-T-10A

Edward B. Rood - Plaintiff
v.
PINELLAS COUNTY,
a Political Subdivision of the State of Florida,
THE PINELLAS COUNTY PLANNING COUNCIL,
FRED MARQUIS,
Pinellas County Administrator - Defendants

ORDER

This is an action brought by the Plaintiff pursuant to 42 U.S.C. § 1983 claiming a violation of his constitutional rights under the Fifth and Fourteenth Amendments of the United States Constitution by virtue of (1) a temporary taking of his property by the Defendants without just compensation, and (2) a denial of procedural due process by the Defendants' unreasonable delay in conducting a hearing on a petition involving the intended development of his property. The case was tried by jury which rendered its verdict in the form of answers to special interrogatories. The jury found, as to the temporary taking claim, that the Plaintiff's property had been the subject of a temporary taking, but the jury also found that the Plaintiff had suffered no damages as a result of that infringement. With respect to the procedural due process claim, the jury found that the Plaintiff had been denied procedural due process and assessed him damages in the amount of $2,000,000.00. Judgement was entered accordingly. The case is before the Court on several post-judgment motions that shall be considered in turn.[1]

[1]A hearing was held on all pending motions on September 30, 1992. The Court notes the inordinate delay in ruling on these motions. Unfortunately, they were inadvertently overlooked in the Court's process of automating its docket.

BACKGROUND

The Plaintiff is an attorney and the owner of certain real property that is the subject of this cause of action. He brought this action against Defendant Pinellas County, Florida, a political subdivision of the state of Florida; Defendant Pinellas County Planning Council (PPC), established pursuant to Chapter 73-594 of the Laws of Florida, as amended by Chapters 74-584, 74-586, 76-473, and 88-464 of the Laws of Florida; and Defendant Fred Marquis, the County Administrator of Pinellas County who is responsible for the day-to-day operation of the Pinellas County government.

The PPC was established to develop a county-wide comprehensive plan and to coordinate and monitor future land use plans of local governmental bodies in Pinellas County in order to provide for the orderly growth, development and environmental protection of the county as a whole. Pursuant to Chapters 74-584, 74-586, 76-473, and 88-464 of the Laws of Florida, the PPC adopted and promulgated a county-wide comprehensive plan (Comprehensive Plan). After the initial Comprehensive Plan was adopted, the law required that proposed changes to the Plan by local governmental bodies had to be filed with the PPC for their review and approval.

At all times relevant to the case, Plaintiff owned a parcel of real property of approximately one-hundred (100) acres located in the City of Oldsmar (City), Pinellas County, Florida. The property is contiguous to an unincorporated area of Pinellas County. On February 9, 1988, Plaintiff and a neighboring property owner entered into a Development Agreement (Agreement) with the City. The Agreement set out the permitted development of the two properties and required the property owners to fund and/or undertake certain infrastructure improvements in

and around the City to mitigate the alleged impacts of the proposed development. Specifically, the Agreement required the property owners to build through Plaintiff's property a collector road that would connect Duane Avenue,[2] which was an unpaved road in unincorporated Pinellas County owned and maintained by the County, i.e., the Duane Avenue right of way was not located on Plaintiff's property. The Agreement further required the property owners to improve the Duane Avenue segment to collector road status as well, and it provided that the City would not issue approval for new construction on the property until the collector roads were completed.

On June 17, 1987, as required by the Comprehensive Plan, the City applied to the PPC for an amendment to the Plan requesting a change to accommodate Plaintiff's development needs. The application and its attachments described the specific changes contemplated, including certain zoning and land use changes and the Duane Avenue extension. On July 15, 1987, the PPC reviewed the application at a public hearing and, at that time, a motion made to approve the amendment failed to pass. Thereafter, Plaintiff and the City petitioned the Pinellas County Circuit Court for a writ of certiorari to review the decision of the PPC. While this petition was pending, Judge Renick of the Pinellas County Circuit Court held in another case that the PPC had failed to properly adopt its Comprehensive Plan and that the law establishing the PPC represented an unconstitutional delegation of legislative power because the legislation enabled the PPC to enact and amend zoning laws, a purely legislative function. While the appeal from Judge Renick's decision was pending, the Florida Legislature enacted Chapters 88-458 and 88-464 of the Laws of

[2]Although the property owners were responsible for all costs incurred in the construction of this collector road, the Agreement further provided that owners would convey any interest they had in the road to the City upon completion.

Florida, which re-established the PPC, and the petition and the appeal were dismissed.

In his complaint, Plaintiff alleged that the re-established PPC adopted a new comprehensive plan on July 2, 1988, which included the land use designations he had previously requested, although it did not approve the Duane Avenue extension. Plaintiff also alleged that while he was awaiting the PPC's ruling on his application, he could not make any use of the property whatsoever, although this fact was disputed at trial.[3] Therefore, Plaintiff's temporary taking claim alleged that the PPC unconstitutionally deprived him of the use of his property without just compensation during the period July 15, 1987 through July 2, 1988, by the application to the property of what was determined to be an invalid land use regulation promulgated by the PPC. The jury found that the PPC's action operated as an unconstitutional taking, however, the jury also found that Plaintiff suffered no monetary damage as a result.

While the re-established PPC was considering its new Comprehensive Plan, Plaintiff continued to pursue his proposed Duane Avenue extension. On May 16, 1988, a representative of Plaintiff sent a letter to Fred Marquis informing him of the Agreement and the proposed extension of Duane Avenue, and requesting an application for amendment to the Comprehensive Plan. The Plaintiff, however, never submitted such an application; rather, on June 15, 1988, Oldsmar's City Manager wrote to the Pinellas County Metropolitan Planning Organization (MPO)[4] requesting that it amend its long range highway

[3]Through his application, Plaintiff sought to have the property redesignated from low density residential to general commercial, residential office, and residential planned development. At trial, Bruce Haddock, City Manager for the City of Oldsmar, testified that during the time Plaintiff's land use plans were being considered by PPC (July 15, 1987 through July 2, 1988), he could have developed the property under the existing land use plan.

plan to include a north-south collector road (Duane Avenue) extending from State Road 584 South to State Road 580. The MPO held a hearing on March 31, 1989 at which time it informed Plaintiff that it would not rule on the matter until it received a recommendation from the County. The MPO held a second hearing on June 23, 1989 at which time it denied the City's request.

In his complaint, Plaintiff alleged that this thirteen month delay--from the time that the City made its first request to the MPO on June 15, 1988 until the time of hearing denying the request on June 23, 1989--was unreasonable[5] Plaintiff's second claim, therefore, alleged that Pinellas County and Fred Marquis violated his procedural due process rights by their failure to timely conduct a hearing on the City's request that the MPO amend its highway plan to include Duane Avenue as a collector road. At trial, the jury found that each of the Defendants deprived Plaintiff of his constitutional right to procedural due process and awarded Plaintiff $2,000,000.00.

Plaintiff's Motion For Judgement against PPC

Plaintiff moves for judgement against the PPC, or in the alternative, for new trial on the issue of damages in his cause of action against the PPC (Doc. 63).[6] Plaintiff argues that because the jury found Defendant guilty of the acts complained of, the Court should enter judgement in accord with the evidence presented that allegedly established that Plaintiff suffered damages. At trial, however, the only evidence presented was the Plaintiff's own opinion as to the value of his property at times not relevant to the taking claim. In other words, the evidence does not establish that Plaintiff suffered any damages until after the PPC ceased to

[4] The MPO is an elected body that served as the transportation planning unit for Pinellas County.

[5] Plaintiff does not challenge the adverse decision of the MPO.

be an actor with respect to the property. The Court finds, therefore, that a rational jury could have concluded, as the jury did, that Plaintiff suffered no damages as a result of the temporary taking. Plaintiff's motion for judgement notwithstanding the verdict or, alternatively, for a new trial, is due to be denied.

Defendants' Motion for JNOV

Defendants Pinellas County and Fred Marquis move for judgement notwithstanding the verdict (Doc. 65), and for new trial or for remittitur (Doc. 67).

The Constitution requires that before the government deprives and individual of a property interest, he must have some form of hearing at a meaningful time and in a meaningful manner. Mathews v. Eldridge, 424 U.S. 319, 96 S.CT. 893 (1976) To be entitled to a hearing, therefore, Plaintiff must have some protectable property interest. Plaintiff argued here that he had a property interest in the Development Agreement; in other words, his contract to extend Duane Avenue vested him with a protectable interest (even though the right of way was owned by the county).

In case involving an inverse condemnation action in Hawaii, the district court determined that a development agreement afforded a proposed developer a business opportunity to develop land but did not give the developer any protectable interest in property under the Fifth or Fourteenth Amendments; therefore, the court held, plaintiffs were not entitled to compensation when the subject matter of the contract was taken. See Kaiser Dev. Co. v. City and County of Honolulu, 649 F. Supp. 926, 935 (D. Haw. 1986), aff'd, 898 F. 2d 112 (9th Cir. 1990), cert. denied,— U.S.—, 111 S. Ct. 1414 (1991). Similarly, in this case,

[6] The Court notes that Plaintiff misidentified Defendant in his motion as the "Pinellas Planning Commission."

Plaintiff held merely a contactual right to pave and extend Duane Avenue, but he had no separate interest in the property itself. The Court finds, therefore, that any delay occasioned by the County in hearing the City's application for an extension of Duane Avenue did not deprive Plaintiff of any procedural due process right. He had no protectable property interest and, in addition, he had no standing to claim a denial of due process with respect to the City's application Accordingly, Defendant's motion for judgement notwithstanding the verdict (Doc. 65) is due to be granted.

Plaintiff's Motions for Fees and Costs

Pursuant to 42 U.S.C.A. § 1988, Plaintiff moves for attorney's fees (Doc. 62). The United States Supreme Court has held that a pro se litigant who is an attorney is not entitled to fees under § 1988. Kay v. Ehrler,—U.S.—, 111 S. Ct. 1435, 113 L.Ed. 2d 486 (1991). Accordingly, Plaintiff's motion for attorney's fees is due to be denied. In addition, Plaintiff moves to have costs taxed (Doc. 64). Federal Rule of Civil Procedure 54(d) provides that a court may tax costs in favor of the prevailing party. In view of this Order, however, Plaintiff is not the "prevailing party" and is therefore not entitled to costs. See American Infra-Red Radiant Co. v. Lambert Indus., Inc., 41 F.R.D. 161 (D.C. Minn. 1966) (reversal of judgement vacates taxation of costs that is included as part of judgement).

Accordingly, upon due consideration, it is hereby ORDERED:

(1) Plaintiff's motion for judgement against Pinellas County Planning Council, or in the alternative, for a new trial on the issue of damages (Doc. 63) is DENIED.

(2) Defendants' motion for judgement notwithstanding the verdict (Doc. 65) is GRANTED and the verdict and judgement against Defendants Pinellas

County and Fred Marquis in the sum of $2,000,000.00 is withdrawn and set aside.

(3) Defendants' motion for new trial or for remittitur (Doc. 67) should be terminated as MOOT.

(4) Plaintiff's motions for attorney's fees (Doc. 62) and to have costs taxed (Doc. 64) are DENIED.

(5) The Clerk is directed to enter judgement for Defendant's and against Plaintiff.

IT IS SO ORDERED.

DONE and ORDERED at Jacksonville, Florida, this 27th day of October 1992.

WILLIAM T. HODGES
United States District Judge

Copy to counsel of record

DEVELOPMENT AGREEMENT

This Agreement made and entered into this 9th day of February, 1988; by and between the City of Oldsmar, Florida, a municipal corporation of the State of Florida, hereinafter referred to as "City" and KEITH R.COLLEN and E. B. ROOD, hereinafter collectively referred to as "Owners".

RECITALS

A. Owners are the fee simple owners of adjoining parcels of real property located within the City of Oldsmar which together comprise approximately 135 acres of land. E. B. Rood is the owner of the property described on Exhibit "A", attached hereto and incorporated herein by reference. Keith R. Collen is the owner of the property described on Exhibit "B", attached hereto and incorporated herein by reference. The said property owned by the Owners shall hereinafter be referred to as "Property".

B. The Owners represent that they are the fee simple owners of the property and that there are no other liens, encumbrances, mortgages, equitable interests or any other type of property interest held by any other person, firm or corporation whose legal or equitable interest in the lands constituting the property will be affected by the matters contained in this Agreement and that the rights granted herein and the obligations created hereby shall in no way be affected by the property rights of any other entity, except Florida National Bank which has joined and subordinated its mortgage interest to this Agreement.

C. Owners desire to develop the Property as a planned development, with a mix of residential, office, retail,

commercial and recreational uses hereinafter referred to as the "the Proposed Development". The current land use plan and zoning districts are reasonable and appropriate for application to the Property upon the fulfillment of the Owners' obligations under this Development Agreement. The Proposed Development requires amendment to the current land use plan designations and zoning district designations on the Property. The Proposed Development will have certain adverse impacts on the ability of the city to provide public services to the Property and to the balance of the community and it is the purpose of this Agreement to provide a mechanism to mitigate many of the adverse impacts created by the development of the Property and to insure that adequate public services may be provided to the Property and to the balance of the residents of the City of Oldsmar.

Prepared by: City of Oldsmar
Post Office Box 100
Oldsmar, Florida 34677

Return to: Cheryl Mortenson, City Clerk
City of Oldsmar, Florida
Post Office Box 100
Oldsmar, Florida 34677

D. The City agrees, in due course and in accordance with necessary procedural requirements, to amend the land use plan designations and zoning district designations on the Property. Owners agree to construct or to contribute toward certain water, sewer, recreation and transportation improvements as set forth in this Agreement, which improvements will mitigate the adverse impacts of the Proposed Development.

E. The Property will be treated as a unified devel-

opment for the purpose of this Development Agreement. The parties agree that for all purposes of review for development approvals, for the provision of water and sewer services, for the provision of all of the City services, for the review of rezoning requests, land use plan amendment requests, site plan reviews and for all other purposes, the Property shall be deemed one unified parcel of land even though the Property consists of two separate ownerships. The parties agree that, absent this unified development approach, the City would not have agreed to matters herein contained and the parties agree that the Property, for so long as this Agreement is in effect, will not be separated now or in the future for development review approval purposes and that the owners will act jointly in all matters concerning the review process and will appoint a representative from among the Owners to act on behalf of them relative to all matters coming before the City and for such purposes the Owners do hereby designate R. Bruce McLaughlin as the agent and representative of the Owners for the purpose of executing all documents, filing all applications, making all commitments and doing all and every other thing necessary for the development review process and discharge of Owner obligations under the terms of this Agreement. The Owners hereby agree that the above-designated individual shall be the lawful representative and agent of the Owners and that the City may rely on all representations and commitments of said agent. The Owners may change the designation of the agent by advising the City in writing (original redesignation to the City Manager's Office with copy to the City Clerk and City Planner) of the identity of the new agent not later than fifteen (15) days prior to the date that such designation is to become effective. Nothing in this paragraph shall be construed as preventing the Owners from selling, leasing, mortgaging or otherwise disposing of all or portions of the Property.

F. This Agreement is authorized by Section

163.3220, et seq., Florida Statutes (1986) and City Ordinance No. 86-41 and the provisions of the said State Statute and City Ordinance are incorporated herein and the requirements and provisions of those laws as they exist as of the date of this Agreement are incorporated herein by reference and shall govern the relationship of the parties under the terms of this Agreement. Any matters required by the State Statute or City Ordinance which are not a part of this written Development Agreement shall, nevertheless, be complied with by the parties. Each Owner shall be mutually and individually responsible for every obligation set forth under the terms of this Agreement regardless of the impact of the development approvals on the individual owner's ownership within the Property. The development permitted is consistent with the City of Oldsmar Comprehensive Plan.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.

2. This Agreement shall be valid for five (5) years from the date that it is executed by all parties. The parties agree that if development of the Property is not completed within the duration of this Development Agreement, that they will meet and confer relative to mutually agreeable extensions hereof.

3. The Owners represent that nothing herein is barred or prohibit by any other contractual agreement to which either of them is a party, by any statute or rule of any governmental agency or any third party, or by the rights of contract vendees, lien holders, mortgage holders or any other party with a direct or contingent interest in the Property,

whether legal or equitable . The parties acknowledge that the City is under a Consent order by the Florida Department of Environmental Regulation and that it has water supply contracts with the City of St. Petersburg, Florida and Pinellas County, Florida. Within the limitations placed on the City by such Consent Order and by such agreements, the City will provide the water and sewer services as requested by the Owners. The restrictions placed on the City by such Consent Order and by such agreements will effect the Property only in the manner as such restrictions or limitations effect all other property within the City of Oldsmar.

4. All development rights created hereunder shall be subject to compliance with all City Ordinances, except as conduct at variance there with is specifically authorized herein, and the applicable regulations of County, State and Federal Agencies and the failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Owners of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction and any matter or thing required to be done under existing ordinances of the City shall not be otherwise amended, modified, or waived unless conduct constituting such modification, amendment or waiver is provided for herein and all necessary procedural steps are taken relative to the granting of such modification, amendment or waiver in accordance with the terms of the applicable City Ordinances. All applicable impact fees , development review fees, building permit fees, and all other fees of any type shall be paid in accordance with their terms and in such amounts applicable as they become due and payable, except as in otherwise specifically provided herein.

5. The City shall, upon execution of this Agreement and application by the Owners, take all steps necessary,

subject to the reviews hereinafter described, to amend the land use plan designations and zoning district designations on the Property as shown on Exhibit "C" attached hereto and incorporated herein by reference in order to accommodate the Proposed Development.

6. The parties recognize that the land use plan designations and zoning district designations on the Property may be subject to review by other governmental agencies and that these reviews and/or processes must take place prior to the land use plan designations and zoning district designations being placed on the Property by the City Council. In the event that the legally authorized review, as finally adjudicated by a Court of Law or an Administrative Hearing, by the Pinellas Planning Council, the Florida Department of Community Affairs or other appropriate agency, precludes the land use plan designations or zoning district designations contemplated by this Agreement from being placed on the Property, then this Agreement shall automatically terminate at the time of such preclusion and the parties will cooperate to return each other to their respective positions prior to the date of this Agreement. The parties further agree that willingness to enter into this Agreement, the staff approval or recommendation of the Proposal Development, land use plan designations and zoning district designations, the passage of ordinances attempting to modify the land use designations or zoning district designations, submittals before the Pinellas Planning Council or the Florida Department of Community Affairs and any other act in furtherance of this Agreement by the City, including the negotiations leading up to the execution of this Agreement, shall not be used by the Owners or their successors in title in any way whatsoever as in committing the City legally through the theory of equitable estoppel or any other legal theory to the approval of the Proposed Development in the event that this Agreement is automatically terminated or for any other reason

does not take effect in all material respects. The parties further agree that any and all actions by the Owners or their representatives in negotiation of this Agreement and including all efforts in the implementation of this Agreement or submittals to other governmental bodies shall in no way be deemed to be action in reliance giving rise to an equitable estoppel and, in the event that it is not possible to be identical to the legal position that they would have maintained if any and all matters regarding the Proposed Development of the Property had never been discussed between them.

7. Notwithstanding the land use plan designations and zoning district designations set forth on Exhibit "C", the maximum density which may be built on the property shall be as follows:

Residential	530 Units
Retail (Commercial)	120,000 sq. feet
Office	125,000 sq. feet

The carrying capacity of the land comprising the Property and the impact on abutting properties may limit the use, public health, safety and welfare would be adversely affected by the use of such lands and all such matters shall be addressed during the site plan review process and nothing herein shall limit the legislative discretion of the City Council in the site plan review process to insure and protect the health, safety and welfare of the public. However, such limitations shall not act to reduce the maximum allowable residential units, or commercial or office square footage allowances provided herein above.

8. Owners shall design, construct, maintain until acceptance by the City and deed or convey by bill of sale, as appropriate, to the City all public infrastructure facilities

providing that said public infrastructure facilities have been incorporated therein with the site plan approval procedures applicable to the Development at the instance of specific dates of site plan approvals. Public infastructure facilities to include those facilities to be located within specific rights-of-way or easements deeded and/or dedicated to use of the public in general and shall include the following:

a. Roads, Streets, Boulevards, Alleyways, etc. to be utilized by vehicles.
b. Pedestrian ways and sidewalks.
c. Sewer collection system including pumping facilities providing transmission of sewerage flow within the collection system.
d. Water distribution system including fire protection facilities.
e. Sewerage effluent reuse system.
f. Storm water drainage systems serving the public facilities and serving to conduct, transmit, channel or otherwise provide for storm water flow from, thru and to adjoining lands according to the natural site topography.
g. Street Lighting.
h. Street Signing.
i. Other facilities deemed necessary for public use.

Public infrastructure facilities shall be complete, inspected and accepted by the City prior to issuance of Certificate of Occupancy for building construction on the property, or letter of credit for 125% of construction costs (including engineering and all other professional services) in form satisfactory to the City Attorney has been deposited with the City to guarantee the completion of public infrastructure facilities prior to the time that Certificate of Occupancy is issued on the

property, and public access and facilities to serve the structure are available in accordance with City regulations.

The City shall provide, or cause the same to be provided, public facilities and services for fire protection, policy protection and the removal of garbage in so far as applicable City codes and regulations govern these facilities and services.

The City shall supply potable water to the property to meet the domestic and fire flow levels of service as required by the City regulations.

The City shall provide sewerage transmission and wastewater treatment facilities to service the property in concurrence with Developers schedules for build-out unless other Regulatory Agencies impose by Law conditions thereon over which the City cannot exercise its control.

The City shall provide treated wastewater effluent transmission facilities from the wastewater treatment plant to the property according to the City's schedule for treated effluent reuse.

Public infrastructure facilities improvements to be provided for under other provisions of this Agreement shall be pursuant to the terms established therein said specific provision.

9. Development Uses Permitted

Owners shall develop the site consistent with the land use and zoning categories shown on Exhibit "C" and shall not exceed 530 residential units, 120,000 square feet of Commercial, and 125,000 square feet of office space. In addition,

a eighteen hole golf course, and a public park will be constructed on the site.

a. The proposed population density for the project is 890 persons.

b. The maximum height of all structures within the development shall not exceed thirty-five (35) feet within the C-2, General Commercial District; RO; Residential Office district, and the RPD-15 Residential Planned Development District. However within the RPD-15 district the maximum building height may be increased up to eighty (80) feet upon special permission of the Oldsmar City Council.

10. Owners shall deed and/or dedicate those lands required for rights-of-way, water, wastewater and drainage, easements, parks, golf course, utilities and other publicly owned entities by Warranty Deed or the title instrument satisfactory to the City Attorney. Where provided for under other provisions of this Agreement, the public facilities shall be transferred in the manner established therein pursuant to said specific provision.

11. Local development permits which will need to be approved and issued include, but are not limited to, the following:

a. Building Permits.
b. Site Plan approvals.
c. Zoning District amendments.
d. Land Use Plan amendments by the City.
e. Land Use Plan amendments by the Pinellas County Planning Council. (if required)
f. The necessary permits from the Department of Environmental Regulation of the State of Florida for certain water and sewer improvements.

g. Drainage improvements and wetlands permits from Southwest Florida Water Management District and the Department of Environmental Regulation.

h. All other approvals or permits as required by existing or future governmental regulations as they now exist or as they may exist in the future.

12. Owners and the City shall provide the following improvements in order to mitigate the adverse impacts of the Proposed Development:

(a.) Transportation

(1) Owners will build and convey to the City of Oldsmar, or such governmental agency as the City shall direct, a collector road substantially as depicted on Exhibit "C". This collector road shall be built in accordance with the most demanding current City subdivision regulations or Pinellas County standards and final site plan approval for any building on the property shall not be given until final site plan approval is obtained for the collector road. No Certificate of Occupancy will be issued on the Property for any new construction until such collector road is completed and accepted by the City or other appropriate governmental entity or a letter of credit for 125% of the construction costs, including engineering and all other professional services (in form satisfactory to the City Attorney) is deposited with the City to guarantee the completion of the subject collector road prior to the date that any building is ready for occupancy on the Property, and public access to the structure is available in accordance with City regulations.

In addition to the construction of the collector road, the Owners shall in that same construction project, construct Mapleleaf Boulevard from its existing eastern terminus in an easterly direction to intersect with the new

collector road. Such construction shall be in accordance with the standards for the collector road and shall be secured by the completion of construction or by a letter of credit as is above set forth.

(2) Owners shall build a public collector road from the railroad crossing on the southern boundary of the Property to State Road 580. Such road will be built to the higher of City or Pinellas County standards including the railroad crossing and signalization of the railroad crossing. No Certificate of Occupancy for new construction shall be allowed on the Property until said project and the pump station relocation referred to in Paragraph 12 (b) (1) is completed, inspected and accepted by the City or other appropriate governmental agency or a letter of credit for 125% of the construction costs (including engineering and all other professional services) in form satisfactory to the City Attorney has been deposited with the City to guarantee the completion of the said project prior to the time that any Certificates of Occupancy are issued on the Property, and public access to the structure is available in accordance with City regulations.

(3) Owners shall contribute the sum of Fourteen Thousand ($14,000.00) Dollars to the City which shall be used by the City for improvements to Mapleleaf Boulevard. Said payments shall be made within ten (10) days of the execution of this Agreement, or ten (10) days after third and final reading of the Ordinance adopting the Comprehensive Plan Amendment.

Said payment shall be made upon demand by the City in order to coordinate the construction of such improvements with the construction of the collector road, but in no event later than approval of the first, final site plan for the Property.

(4) Owners shall, at their expense, construct acceleration, deceleration, left turn lanes at the intersection of the collector road and State Road 584 (opposite the Sperry entrance) in accordance with Florida Department of Transportation standards and as approved in City site plan review. In the event the Owners desire to request building permits on the Property prior to the conclusion of all approvals and construction of such intersection improvements, a letter of credit in 125% of the amount of the construction will be provided to the City in the same manner as is required in subparagraphs (1) and (2) above.

(5) When sufficient warrants exist therefor, Owners shall install a new four-phase traffic signal at the intersection of the collector road, State Road 584 and the Sperry Plant entrance. If a traffic signal is already in place at such time, Owners shall modify such signal to four-phase to serve the Property as well as the Sperry Plant. Such installation or modification shall be subject to the approval of the Florida Department of Transportation, Pinellas County, and the City.

(6) Owners shall pay the normal transportation fees imposed by Pinellas County Ordinance No. 86-43 less a Fifty-six Thousand ($56,000.00) Dollar credit given to the Owners for their fair share cost of improving Mapleleaf Boulevard.

(7) Following the construction of the collector road referred to in Paragraph 12 (a) (1) and (2), the Owners shall continue to be responsible for the good repair and condition of said road during the development of the project, the collector road shall require repair, such repair shall be accomplished by the Owners at their sole expense. In the event such repairs are not made on a timely basis, the City may withhold Certificates of Occupancy on any portion of the

Property until such time as such repairs are completed.

(b) Sewer System Improvements

(1) Owners shall relocate the pump station currently located on the Duane Avenue right-of-way to such location in the immediate vicinity as is determined by the City. Such relocation shall occur not later than when the Duane Avenue construction project (paragraph 12 (a) (2) occurs. The relocation project will be at the sole expense of the Owners, except for any condemnation costs incurred by the City if the City must exercise its power of eminent domain to provide a location for the pump station.

(2) Owners shall contribute Two Hundred Sixty Thousand ($260,000) Dollars to the City which shall be used by it to construct an effluent re-use line in order to provide an effluent re-use line from the sewer plant to the Property. Such funds shall be spent on the said project in the manner determined most efficient by the City. Such contribution shall be made within ten (10) days of the City Council of the City of Oldsmar authorizing the City Manager to seek bids for the said work. To the extent allowed by Ordinance 24-70 (4) Code of Ordinances, the City shall credit Owners for Owners' contributions made to construct or improve the effluent re-use line. The Owners shall continue to be responsible for on-site distribution system of sewer effluent adequate to accept and dispose of effluent returned to the Property together with any necessary booster pumps as appropriate. The design of such effluent distribution system on the Property will be approved by the City.

(3) Owners shall construct, at their expense, a master pumping station in accordance with the City's requirements which pumping station shall be constructed,

inspected by the City and accepted by the City prior to any Certificate of Occupancy being issued on the Property.

(4) The City shall make available to the Property sewer plant capacity sufficient to serve the Proposed Development as the same is constructed over time, a portion of which required capacity has been reserved by Owners' payment to the City of Seven Hundred Fifteen Thousand ($715,000) Dollars under the terms of the Contract for Sale of such capacity, the terms of which sale shall be incorporated herein. This payment shall be credited against sewer impact fees imposed against the Proposed Development as sewer taps are requested in the amount of the then exisiting sewer impact fee. The Owners shall receive a credit of Sixty-two Thousand Four Hundred ($62,400) Dollars against any sewer impact fees because of Owner's contributions toward relocating the pump station and constructing the master pumping station.

(c) Water System Improvements

(1) Owners shall contribute Three Hundred Thirty-five Thousand ($335,000) Dollars to the City which shall be used by it to construct such water system improvements as are necessary to provide adequate water service to the Proposed Development as the same is constructed over time. Payment shall be made upon the first final site plan of structures requiring water service approval or not later than June 1, 1988, whichever shall first occur. Such payment shall entitle the Owners to a credit against water impact fees in an amount equaling Seven Hundred Sixty-seven (767) equivalent residential connections (ERC) and any ERCs required in excess of this number shall be paid at the then current rate. If any ERCs are not used in the Proposed Development, the Owners shall not be entitled to any refund. No building permits of any kind will be issued on the project until the funds

required to be paid hereunder have been delivered to the City.

(d) Land Dedication Recreation Improvements

(1) An eighteen (18) hole "executive" golf course shall be construction on the Property to the first quality PGA adopted construction standards by Owners, such reconstruction to be completed within twelve (12) months following third and final reading of the Ordinance adopting the Comprehensive Plan amendment. The golf course design with appropriate construction standards will be certified by a member of the American Society of Golf Course Architects (ASGCA) and will be approve by the City. The construction of the golf course will be coordinated with State Road 584 force main improvements that will be constructed by the City and which will pass through the golf course property. The reconstructed eighteen (18) hole golf course, together with all other golf course and park property, as described on Exhibit "E" attached hereto and incorporated herein by reference, will be conveyed to the City by Warranty Deed and will be accompanied by a title insurance policy in an amount not less than the fair market value of the golf course and park property, which conveyance and the required construction shall be in full satisfaction of all recreation payment and land dedication requirements imposed by the City upon the Property and the Proposed Development.

The architectural design and site plan for reconstruction of the golf course will be delivered to the City not less than ninety (90) days from the date of the third and final reading of the Ordinance adopting the Comprehensive Plan amendment. In addition to reconstruction activities, the Owners shall renovate the clubhouse, pool, parking lot, tennis and shuffleboard courts to a good quality standard of repair and construction. All structures shall meet all building

codes, fire codes, health department regulations before any Certificates of Occupancy are issued on any portion of the Property. All such renovations and reconstruction of the aforementioned facilities shall be completed within twelve (12) months from the date of the third and final reading of the Ordinance adopting the Comprehensive Plan amendment. The Construction of the golf course be coordinated with the City force main construction through the golf course lands.

No Certificate of Occupancy will be issued on the Property for any new construction until such reconstructed golf course is completed and the reconstruction of all structures as hereinabove referred to is completed, and such golf course and reconstructed structures have been accepted by the City or a letter of credit for one hundred twenty-five percent (125%) of the construction costs, including design and all other professional services, is deposited with the City to guarantee the completion of the subject golf course or reconstruction of the subject structures.

(2) Following the deeding of the golf course property, the City shall lease the golf course portion of the Property, less the City Park of 6.5 acres, back to the Owners for a leasehold consideration and under the terms and conditions as are set forth on the sample golf course lease agreement attached hereto as Exhibit "D" and incorporated herein by reference.

(3) All housing and residential areas on the Property will have their own private recreation areas sufficient to provide a reasonable level of recreation to the residents of those particular developments, such private recreation and the sufficiency thereof to be approved during the final site plan process by the City. The provision of this additional private recreation shall be in addition to public

recreation requirements set forth hereinabove.

13. Owners and City shall coordinate the scheduling of construction obligations imposed on them hereby with the development schedule of the Owners so that infrastructure improvements provided for hereby shall be completed in a timely fashion so as to provide services to the Proposed Development.

14. If required by Law, Owners shall obtain development permits from the appropriate government agencies including, without limitation, the City of Oldsmar, the Pinellas Planning Council, the Florida Department of Community Affairs, the Florida Department of Environmental Regulation, the U.S. Army Corps of Engineers, the Southwest Florida Water Management District, the Environmental Protection Agency, The Tampa Bay Regional Planning Council, the Florida Department of Transportation and Pinellas County. These government approvals and permits shall be obtained at the sole cost of the Owners. A master drainage plan shall be submitted to the City no later than the date of submittal of the first site plan for review and development approval.

15. Any notice or request required or authorized to be given by the terms of this Agreement or under any applicable law by either party shall be in writing and shall be either hand delivered or sent by certified or registered mail, postage prepaid, return receipt requested. Such written notice shall be addressed as follows:

As to City:

City of Oldsmar
Attention: Bruce T. Haddock, City Manager
P.O. Box 100

Oldsmar, Florida 34677

As to Owners:

Rood and Collen Properties
Attention: Timothy A. Johnson, Jr.
P.O. Box 1368
Clearwater, Florida 34617

R. Bruce McLaughlin
523 W. Bay Dr. Ste A
Largo, Florida 34046

Either party may by subsequent written notice, designate a different address or party for receiving notice.

16. This Agreement shall constitute a covenant running with the land for the duration hereof and shall be binding upon the Owners and upon all persons deriving title by, through or under said Owners and upon their assigns and successors in title for such duration. The agreements contained herein shall benefit and limit all present and future owners of the property, and the City for the term hereof. Any monetary payment called to be made hereunder or any construction activities or renovation activities, particularly the golf course and clubhouse and transportation networks, shall be deemed to be an obligation on the land and shall constitute a lien running with the Property and binding on all future property owners until such obligations are met in full. The Owners may release the Property from this lien by depositing with the City a letter of credit in form acceptable to the City Attorney for 125% of any amount due for such monetary payment or construction activity, such amount to include all construction costs, professional fees, carrying charges of any kind and all other costs associated with the activity. Such lien

shall be deemed to be superior to any other liens or encumbrances now on the Property or hereafter placed on the Property and such liens may be foreclosed by the City Attorney in accordance with Florida Statutes. In the event of foreclosure, all costs of such foreclosure, including attorney's fees at trial and appellate levels shall be recoverable against the Property.

17. The following conveyances and easements will be delivered to the City within thirty (30) days of the date of this Agreement:

a. A conveyance by Warranty Deed of 50 feet along the southerly boundary of State Road 584 for the expansion of State Road 584 and for the provisions of City utilities. After the conveyance of the said property to the City, the Owners or their successors in title may use such property for floor area calculations on the remaining lands adjacent to State Road 584.

b. An easement for drainage purposes along the northerly boundary of the Property for the purpose of State Road 584 drainage purposes.

c. Certain drainage easements to be identified by the City to accommodate the drainage across the Property from within the Property and in order to accommodate drainage flows from abutting property and from the property to the north to include the conveyance of all waters generated by the project and to accommodate waters from surrounding properties in an amount not less than experienced at the present time and including any additional flows anticipated because of development activities on such abutting properties after all City and other governmental agency regulations and standards have been applied relative to required detention and

allowable discharge of storm water.

18. Within ninety (90) days from the date of this Agreement, or as otherwise provided, the Owners shall deliver to the City the following documents prepared by certified, licensed professional engineers or other appropriate professionals the following documents:

a. A boundary survey of the entire Property.

b. A jurisdictional wetlands survey including all Department of Environmental Regulation jurisdictional wetlands or other water bodies under the jurisdiction of Southwest Florida Water Management District. This survey to be received prior to any site plan on the Property being accepted by the City.

c. A buffering plan between the commercial and office useages and State Road 584 and a buffering plan between the commercial and offices useage and any abutting residential areas.

d. A landscape plan and tree survey of the Property in its existing condition shall be submitted to the City prior to submittal of the first site plan on the Property.

e. Master sewer, effluent re-use, water, and drainage plans shall be submitted to the City prior to any site plans being submitted, including the site plan for the collector road.

19. This Agreement constitutes the entire agreement between the parties and no modification hereof shall be made except by written agreement. The parties agree that

there are no outstanding agreements of any kind other than are reflected herein. Except as is otherwise specifically provided herein, the Property shall be subject to laws, ordinances and regulations of the City as they exist as of the date of this Agreement.

a. Should any other governmental permits or approvals be necessary to effectuate the provisions of this Agreement, the City agrees to vigorously support the Owners' applications to obtain such permits or approvals. Specifically, the City shall assist the Owners in obtaining any required permits for a level crossing the railroad line by the collector road and Duane Avenue.

b. The City shall approve site plans allowing the uses consistent with the conceptual site plan as attached hereto as Exhibit " ".

20. Any reference in this Agreement to the Owners contemplates E.B. Rood and Keith R. Collen or their successors in interest, all rights and obligations of either or both of such parties hereunder being freely assignable. Assignment of any rights or interests or obligations under this Agreement shall not relieve the Owners from individual responsibility to perform all obligations of the Owners hereunder except upon a release therefor being executed by the parties hereto and recorded in the Public Records of Pinellas County, upon such terms as are mutually satisfactory to the parties. The City shall not unreasonably withhold such release. The City shall give such release if the Owners provide a letter of credit for one hundred twenty-five percent (125%) of the construction costs, including engineering and all other professional services, which shall be deposited with the City to guarantee the completion of the subject improvements set forth in this Development Agreement. Such letter of credit shall be in a

form satisfactory to the City Attorney and shall be of such duration as will be reasonable to insure the completion of the Owners' responsibilities under the terms of this Agreement.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the day and date first above mentioned.

WITNESSES:

_____ /S/ _____

_____ /S/ _____

_____ /S/ _____

_____ /S/ _____

Attest: (seal)

_____ /S/ _____

City Clerk

Approved as to form:

_____ /S/ _____

City Attorney

_____ /S/ _____

E.B. Rood

Date: _____

_____ /S/ _____

Keith R. Collen

Date: _____

CITY OF OLDSMAR

BY: _____ /S/ _____

City Manger

BY: _____ /S/ _____

Mayor

PINELLAS COUNTY FLORIDA
PHONE (813) 462-3485 • 315 COURT STREET • CLEARWATER, FLORIDA 33516

FRED E. MARQUIS
COUNTY ADMINISTRATOR

April 15, 1987

Mr. Bruce Haddock, City Manager
City of Oldsmar, Florida
Post Office Box 100
Oldsmar, Florida 33557

Dear Bruce:

I have now had the opportunity to review your request that we accept the improved Duane Avenue collector on the County system.

I am advised by our Engineering staff and the State Department of Transportation that the road will be classified under the new State guideline after it has been improved and opened to travel.

If the road is classified as a local collector in the unincorporated area, it would be the maintenance responsibility of Pinellas County between SR 584 and SR 580. If it is classified as a local major street, it would remain a County responsibility for that portion in the unincorporated area only.

It appears at this time that we will have to address the specifics upon completion of the State's classification after the improvements are accomplished.

Sincerely,

/S/

Fred E. Marquis
County Administrator

cc: Gene Jordan, Director
Public Works

LIST OF DEVELOPMENT AGREEMENT STATUTES

STATE	STATUTE	EFFECTIVE DATE
California	California Government Code § 65864-65869.5	September 21,1979
Florida	Florida Statutes § 163.3220, et.seq.	July 1, 1986
Hawaii	Hawaii Revised Stautes §46-124 - 46-132	April 30, 1985
Illinois	Illinois Comprehensive Statutes 5/11 - 15-1	July 31, 1963
Nevada	Nevada Revised Statutes §278.0201 - 278.0207	June 12, 1985
Washington	Revised Code of Washington, §82.02.020	July 1, 1982

"(a) The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development and discourage commitment to comprehensive planning.

"(b) Assurance to a developer that upon receipt of his development permit he may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring that there are adequate capital facilities for the development, encourages private participation in comprehensive planning, and reduces the economic costs of development.

"(3) In conformity with, in furtherance of, and to implement the Local Government Comprehensive Planning and Land Development Regulation Act and the Florida State Comprehensive Planning Act of 1972, it is the intent of the Legislature to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for

development, encourage the efficient use of resources, and reduce the economic cost of development.

"(4) This intent is effected by authorizing local governments to enter into development agreements with developers, subject to the procedures and requirements of ss. 163.3220 - 163.3243." § 163.3220, Florida Statutes 1987.